

Chapter 357-49 WAC

DIRECTOR'S REVIEW

WAC

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WAC 357-49-010 For what actions may an individual request a director's review? (1) If the department of enterprise services is responsible for the assessment process, an applicant or candidate may request a director's review of his/her examination results. If the director's office is responsible for the removal of his/her name from an applicant or candidate pool as specified in WAC 357-16-175 the individual may request a director's review. Director review decisions regarding the removal of an individual's name from an applicant or candidate pool or an individual's examination results are final and not subject to further review or appeal.

(2) An individual may request a director's review of the removal of his/her name from a layoff list as specified in WAC 357-46-145.

(3) An employee may request a director's review of the following:

(a) Allocation or reallocation per WAC 357-13-080; or

(b) Performance evaluation process or procedure per WAC 357-37-080.

(4) In addition to the subject listed in subsection (2) of this section, an employee who has been adversely affected by a violation of the civil service laws or rules may request a director's review within thirty calendar days of the date the employee could reasonably be expected to have knowledge of the action giving rise to a law or rule violation claim or the stated effective date, whichever is later. An employee may not request a director's review of:

(a) An alleged violation of civil service laws or rules pertaining to layoff, except for removal of his/her name from a layoff list as provided in subsection (2) of this section; or

(b) The actions of reduction, dismissal, suspension, demotion or separation.

(5) An individual may request the director review his/her request for remedial action per WAC 357-19-430 or 357-19-450. Requests for remedial action must be received within thirty calendar days of the date the individual could reasonably be expected to have knowledge of the action giving rise

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to violation of the nonpermanent appointment or temporary appointment rules.

[Statutory Authority: Chapter 41.06 RCW. 11-23-054, § 357-49-010, filed 11/10/11, effective 12/13/11; 06-03-071, § 357-49-010, filed 1/12/06, effective 2/13/06; 05-19-011, § 357-49-010, filed 9/8/05, effective 10/10/05; 05-12-082, § 357-49-010, filed 5/27/05, effective 7/1/05; 05-01-182, § 357-49-010, filed 12/21/04, effective 7/1/05.]

WAC 357-49-015 How does an individual or employee request a director's review? (1) Director's review requests must be filed in writing at the office of the director.

(2) Review requests must include:

(a) The name and address of the employee, applicant or candidate;

(b) The name of the employer that took the action for which a review is requested;

(c) A telephone number at which the employee, applicant or candidate can be reached;

(d) The job classification or position of the employee;

(e) A short statement of the grounds or reasons for the request, and if applicable, the rule(s) the employee believes has been violated; and

(f) A short statement of the relief or remedy sought by the employee, applicant or candidate.

(3) The employee, applicant or candidate is responsible for notifying the director of any change in address or telephone number. Employees, applicants or candidates who are represented shall include the name, address and telephone number of their representative.

[Statutory Authority: Chapter 41.06 RCW. 05-01-183, § 357-49-015, filed 12/21/04, effective 7/1/05.]

WAC 357-49-017 When is a director's review part of the appeal process? When an individual requests a director's review for any of the following types of actions, the director's review constitutes the initial step of the appeal process:

(1) Review of an employee's allocation or reallocation per WAC 357-13-080;

(2) Review of an alleged violation of civil service law or rules per WAC 357-49-010 (2) and (4); and

(3) Review of a remedial action request per WAC 357-49-010(5).

[Statutory Authority: Chapter 41.06 RCW. 05-19-011, § 357-49-017, filed 9/8/05, effective 10/10/05.]

WAC 357-49-018 Does an individual or an employer have the right to appeal the results of a director's review to the board? Except as provided in WAC 357-49-010(1), either party may appeal the results of the director's review to the board by filing written exceptions to the director's determination in accordance with chapter 357-52 WAC. In accordance with WAC 357-52-010, written exceptions for appeals of allocation or reallocation are filed:

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(1) Through December 31, 2005, with personnel appeals board; and

(2) As of January 1, 2006, with personnel resources board.

[Statutory Authority: Chapter 41.06 RCW. 05-19-011, § 357-49-018, filed 9/8/05, effective 10/10/05.]

WAC 357-49-019 What civil service rules govern the director's review process? Chapter 357-49 WAC governs the process under which director's reviews are conducted.

[Statutory Authority: Chapter 41.06 RCW. 05-19-011, § 357-49-019, filed 9/8/05, effective 10/10/05.]

WAC 357-49-020 What process is used to conduct a director's review? (1) The director's review is informal and conducted by the director or designee.

(2) The review may be conducted by review of written documents, by telephone, or by other electronic means as determined by the director or designee.

(3) The director or designee shall prepare a record of the documents reviewed and issue a written determination.

[Statutory Authority: Chapter 41.06 RCW. 05-01-183, § 357-49-020, filed 12/21/04, effective 7/1/05.]

WAC 357-49-022 Who has the burden of proof in a director's review? The individual or employee requesting the director's review has the burden of proof in a director's review.

[Statutory Authority: Chapter 41.06 RCW. 05-19-011, § 357-49-022, filed 9/8/05, effective 10/10/05.]

WAC 357-49-023 For purposes of this chapter, how must written documents be filed with the director? (1) **Filing papers for director's review requests.** Papers that must be filed with the director for director's review requests are considered to be filed only when the papers are actually received in the director's review office in Olympia, Washington.

(2) **Filing papers for director's review requests by telephone facsimile.**

(a) Written documents filed with the director for review requests by telephone facsimile are considered received when a legible copy of the document is reproduced on the director's telephone facsimile equipment in the director's review office. If transmission begins after customary office hours, which are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the document will be deemed filed on the next business day.

(b) Any document filed with the director by telephone facsimile should be preceded by a cover page identifying the addressee; the party making the transmission, including the address, telephone and telephone facsimile number of such party; the review to which the document relates; the date of transmission; and the total number of pages included in the transmission.

(c) The party attempting to file papers by telephone facsimile bears the risk that the papers will not be timely received or legibly printed, regardless of the cause. If the telephone facsimile is not legible, it will be considered as if it had never been sent.

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(d) The original of any document filed by telephone facsimile should be mailed to the director within twenty-four hours of the time that the telephone facsimile was sent.

(3) The filing of papers for director's review requests by electronic mail ("e-mail") is not authorized without the express prior approval of the director, and only under such circumstances as the director allows.

[Statutory Authority: Chapter 41.06 RCW. 06-03-070, § 357-49-023, filed 1/12/06, effective 2/13/06.]

WAC 357-49-025 How must exhibits for director's reviews be prepared and exchanged? (1) When exhibits are submitted for any director's review, one copy must be provided for the director or designee and one copy must be provided to the opposing party.

(2) For allocation reviews, employees must submit all exhibits through the employer's human resource office. The employer's human resource representative is responsible for forwarding all exhibits to the director or designee within the time frames set by the director or designee.

(3) For all other director's reviews, the party submitting the exhibit is responsible for providing copies to the director or designee and opposing party within the time frames set by the director or designee.

(4) The parties must pre-mark their exhibits for identification before they are provided to the opposing party and submitted to the director or designee.

(5) The director or designee may limit the number, scope and timing of exhibits.

[Statutory Authority: Chapter 41.06 RCW. 05-19-011, § 357-49-025, filed 9/8/05, effective 10/10/05.]

WAC 357-49-027 What happens if the person requesting a director's review does not submit all the information required by WAC 357-49-015? (1) When the director receives a request for review, the director reviews the document(s) to determine whether the information required by this section has been provided.

(2) If any of the required information is not provided with the request for review, the director instructs the person requesting the review to provide the missing information and sends a copy of the notice to all affected parties.

(3) The person requesting the review must provide the missing information as requested within twenty-one calendar days of the date the notification is mailed.

(4) When the director receives the requested information, a copy will be sent to the other affected parties.

(5) If the person requesting the review fails to comply with the requirements of this section the director may dismiss the request for review.

[Statutory Authority: Chapter 41.06 RCW. 06-03-070, § 357-49-027, filed 1/12/06, effective 2/13/06.]

WAC 357-49-035 When does a director's determination become final? (1) Director review decisions regarding the removal of an individual's name from an applicant or candidate pool or an individual's examination results are not subject to further review or appeal and become final when notice of the determination is served on the parties.

(2) For all other director's determinations, if no exceptions are filed, the determination becomes final thirty calendar days after notice of the determination is served on the parties.

[Statutory Authority: Chapter 41.06 RCW. 05-19-011, § 357-49-035, filed 9/8/05, effective 10/10/05.]